IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8446 of 1990

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DHINKALAL AGRO CHEMICALS PVT LTD. & 1 - Petitioner(s)

Versus

GHOGHA GRAM PANCHAYAT & 1 - Respondent(s)

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Appearance :

MR MC BHATT for Petitioner(s) : 1 - 2.
MS HANSA B PUNANI for Respondent(s) : 1,
DS AFF.NOT FILED (N) for Respondent(s) : 2,
MR. DIPEN DESAI, AGP for Respondent(s) : 2.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 28/09/2005

ORAL JUDGMENT

1.In this petition under Articles 226 and 227 of the Constitution of India, the petitioners have challenged the legality and validity of the judgment and order

passed by the Additional Chief Secretary (Appeals), Revenue Department, State of Gujarat dated 12/16.1.1990 passed in Revision Application No.ARD/LND/R/169/1985 in allowing the said Revision Application and quashing and setting aside the Non-agricultural Use Permission granted by the Taluka Development Officer dated 25.1.1985.

2. The petitioner No.1 was the owner of land bearing Block No.44 situated in the sim of Ghogha, Taluka Ghogha, District Bhavnagar and as they wanted to use the said land for non-agricultural purpose, they have applied before the Taluka Development Officer for Non-agricultural Use Permission and by order dated 25.1.1985 the Taluka Development Officer, Ghogha granted the Non-agricultural Use Permission. It appears that even the said Non-agricultural Use Permission was further modified by order dated 30.3.1985. It appears from the record that Ghogha Gram Panchayat-respondent No.1 herein challenged the said Non-agricultural Use Permission granted by the Taluka Development Officer, Ghogha before the Additional Chief Secretary (Appeals), Revenue Department, State of Gujarat by way of Revision Application No.ARD/LND/R/169/1985 and in the said Revision Application the petitioner No.1 was not

joined as a party. It also appears from the record that the petitioner No.1 has subsequently sold the said land in question to the petitioner No.2 by sale-deed dated 15.12.1988. The Additional Chief Secretary (Appeals), Revenue Department, State of Gujarat by his order dated 12/16.1.1990 allowed the Revision Application filed by the respondent No.1 Gram Panchayat and cancelled the Non-agricultural Use Permission granted by the Taluka Development Officer, Ghogha dated 25.1.1985. Being aggrieved and dissatisfied with the order passed by the Additional Chief Secretary (Appeals), Revenue Department, State of Gujarat dated 12/16.1.1990 passed in Revision Application No.ARD/LND/R/169/1985, the petitioner has preferred the present Special Civil Application under Articles 226 and 227 of the Constitution of India.

3. Number of submissions have been made by the learned advocate appearing on behalf of the petitioners on merits. However, his main submission is that before passing impugned judgment and order cancelling the Non-agricultural Use Permission dated 25.1.1985 granted by the Taluka Development Officer, Ghogha the petitioners were not heard and therefore, impugned order is in breach of principles of natural justice. He has also

further submitted that in fact, the petitioner No.1 was not even joined as the party to the Revision Application though the petitioner was vitally affected as the Taluka Development Officer granted Non-agricultural Use Permission in favour of the petitioner. Shri. M.C.Bhatt, learned advocate appearing on behalf of the petitioners has further submitted that in fact the petitioner No.2 is a subsequent purchaser who has purchased the land in question from the petitioner No.1 pursuant to the Non-agricultural Use Permission granted by the Taluka Development Officer, Ghogha. Therefore, it is requested to allow the present Special Civil Application.

4. Shri Dipen Desai, learned AGP appearing on behalf of the State Government is not in a position to satisfy this Court whether the petitioners were heard before passing the impugned judgment and order or not ? On the contrary, on going through the judgment and order passed by the Additional Chief Secretary (Appeals), Revenue Department, State of Gujarat impugned in the present Special Civil Application, it appears that even the petitioner No.1 was not even the party to the proceedings. In view of the fact that the Non-agricultural Use Permission granted by the Taluka

Development Officer dated 25.1.1985 came to be set aside by the Additional Chief Secretary (Appeals), Revenue Department, State of Gujarat which was in favour of the petitioner No.1, at least, the petitioner No.1 was required to be heard before cancelling said permission. Under the circumstances, the judgment and order passed by the Additional Chief Secretary (Appeals), Revenue Department, State of Gujarat dated 12/16.1.1990 passed Revision Application No.ARD/LND/R/169/1985 is found in breach of the principles of natural justice and the same is required to be quashed and set aside and is, accordingly, quashed and set aside. The matter is remanded to the Additional Chief Secretary (Appeals), Revenue Department, State of Gujarat, Ahmedabad for deciding the same afresh in accordance with law and on merits and after issuing the notice upon the petitioners and after giving an opportunity to the petitioners as well as to all the concerned parties. It goes without saying that the petitioners will be entitled to raise all the contentions which are available to them under the law.

5. Rule is made absolute to the aforesaid extent, however, there will be no order as to costs.

(M.R.SHAH, J.)

kdc.